

**COUNTY OF KAUAI, PLANNING DEPARTMENT
4444 RICE STREET, LIHUE, KAUAI, HAWAII 96766**

MEMORANDUM

DATE: September 7, 2020
TO: Planning Commission Subdivision Committee
FROM: Clerk of the Commission
SUBJECT: 2nd Addition to the Planning Commission Subdivision Committee 9/8/20 Agenda

I. NEW BUSINESS (For Action)

2. Final Subdivision Map Approval

- a. Subdivision Application No. S-2018-15 = *Kilauea Ohana Plateau, LLC*.
3. Memorandum (9/4/20) from Ian K. Jung, Esq., to Ms. Glenda Nogami-Streufert, Chair, Mr. Roy Ho, Subdivision Committee Chair, and Planning Commission, County of Kauai requesting Mr. Youn's petition to intervene and/or appeal of the Planning Director's decision be dismissed for failing to meet the rules provided for in the RPPPC and that the Final Subdivision Map Approval be granted.

BELLES GRAHAM LLP

ATTORNEYS AT LAW

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OF COUNSEL

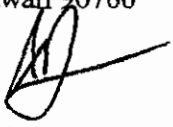
MICHAEL J. BELLES
DAVID W. PROUDFOOT
DONALD H. WILSON

SEP -4 A2:29

M E M O R A N D U M

TO: Ms. Glenda Nogami-Streufert, Chair
Mr. Roy Ho, Subdivision Committee Chair
Planning Commission, County of Kauai
c/o Planning Department
4444 Rice Street, Suite A473
Lihue, Kauai, Hawaii 96766

VIA HAND DELIVERY

FROM: Ian K. Jung, Esq. 

DATE: September 4, 2020

RE: Subdivision No. S-2018-15
Lot 11-A-2-B-1 (por.)
Kilauea, Kauai, Hawaii
Kauai Tax Map Key No. (4) 5-2-005:023 (por.)
Owner: Kilauea Ohana Plateau, LLC

This office represents Kilauea Ohana Plateau, LLC ("Co-Applicant") with regard to Subdivision Application No. S-2018-15.

The Co-Applicant and the County of Kauai entered into a Memorandum of Understanding (Kilauea Plateau Subdivision) ("MOU") (undated) with regard to the subdivision of land in Kilauea for the creation and future dedication of the New Town Kilauea Road and Bike Path. (See, *Exhibit "A"* for a copy of the MOU). The design of the subdivision was a shared effort between the Co-Applicant and the County of Kauai. The Planning Commission issued Tentative Subdivision Approval on September 11, 2018, which conditions were memorialized in a letter by the Planning Department dated September 20, 2018. (See, *Exhibit "B"*). The Co-Applicant has now completed all conditions required under the Tentative Approval.

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As a follow up to our representation to the Planning Commission and meetings with the County of Kauai's Planning Department and Department of Public Works ("DPW"), Engineering Division, we prepared the First Amendment To Memorandum Of Understanding (Kilauea Plateau Subdivision) ("First Amendment to MOU") between the parties to this Subdivision Action. The Subdivision Lot Index was revised to amend the lot acreage counts based on revisions requested by DPW Engineering to certain lots as well as Section 2.9 of the MOU as required by DPW Engineering. The First Amendment to MOU has been executed by the Co-Applicant and the County of Kauai as provided in *Exhibit "C"*, attached hereto. Below is a schedule of the lots:

Subdivision of Lot 11-A-2-B into:

1. Lot 11-A-2-B-1 – 0.573 acre (R-6)
2. Lot 11-A-2-B-2 – 1.804 acres (R-6)
3. Lot 11-A-2-B-3 – 11.327 acres (Ag – restricted)
4. Lot 11-A-2-B-4 – 24.209 acres (Ag – restricted, but with a portion of Urban)
5. Lot 11-A-2-B-5 – 14.809 acres (Ag – restricted)
6. Lot 11-A-2-B-6 – 22.956 acres (Ag – restricted)
7. Lot 11-A-2-B-7 – 97.028 acres (Ag – restricted, but density allocated in separate CPR)
8. Roadway Lot A – To be dedicated to COK.
9. Roadway Lot B – Road design by Esaki and approved by the COK.
10. Multi-Use Path Lot – To be dedicated to COK.

After three (3) years of community discussion with Kilauea Neighborhood Association and finalization of design with the County of Kauai as it relates to the New Town Kilauea Town Road and Bike Path, Mr. Avery Youn presents a challenge to the Project.

Mr. Youn's letter dated September 1, 2020, purports to submit an intervention request and an appeal of the decision of the Planning Director to approve Final Subdivision Map Approval. Both requests are procedurally flawed as it relates to the Chapter 9 ("Subdivision Ordinance") of the Kauai County Code, 1987 as amended ("KCC"), and to the Rules of Practice and Procedure of the Planning Commission ("RPPPC").

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With regard to the request to intervene, Mr. Youn cites Chapter 4 of the RPPPC. However, petitions to intervene are only allowed for Agency Hearings before the Planning Commission, as provided for in RPPPC Rule 1-4-3.

A brief overview of the County's subdivision process is warranted to understand the history of this Subdivision Action. Title IV, Chapter 9 of the KCC contains the Subdivision Ordinance. The KCC Chapter 9 is unique in the sense the County of Kauai is the only county within the State where subdivision proposals are approved by the County Planning Commission, as mandated by Article XIV, Section 14.09 of the County Charter.

The subdivision process occurs in two phases. Once an application is deemed complete, the Subdivision Committee of the Planning Commission first takes action on the Tentative Subdivision Map Approval. It is at this stage where conditions are imposed to ensure compliance with the Subdivision Ordinance. The applicant must first fulfill the conditions imposed prior to obtaining Final Subdivision Map Approval by the Subdivision Committee, which must then be ratified by the Planning Commission. Prior to Final Subdivision Map Approval, requests for comments are sent to various government agencies for review and approval. The subdivision process is unlike the Planning Commission's permit process in that the issuance of Final Subdivision Map Approval is more ministerial in nature versus discretionary. As such, if the applicant fulfills all the conditions imposed on Tentative Subdivision Map Approval, then the Final Subdivision Map Approval must be issued.

When a petitioner requests intervention the first question is whether the request is subject to a Chapter 91 contested case. HRS § 91-1 defines "contested case" as "a proceeding in which the legal rights, duties, or privileges of specific parties are required by law to be determined after an opportunity for an agency hearing. HRS § 91-1 defines "agency hearing" as referring "only to such hearing held by an agency immediately prior to judicial review of a contested case as provided in section 91-14."

In order for a contested case to be applicable there must be a hearing pursuant to law. The Subdivision Ordinance does not require an agency hearing before action is taken either at the Tentative Subdivision Map Approval or Final Subdivision Map Approval. Therefore, a reviewing court would not have jurisdiction over an agency appeal given there is no hearing pursuant to law.

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Pursuant to RPPPC Rule 1-1-2(7)(i), "Hearing" is defined as an "Agency hearing" or "Public Hearing". An "Agency Hearing" "refers only to such hearing held by the Commission immediately prior to judicial review of a contested case as provided in Section 91-14 HRS, including but not limited to a Class IV Zoning Permit, a Use Permit, and a Variance Permit pursuant to the CZO and other applicable laws. "Public hearing means a quasi-legislative hearing regarding the adoption, repeal, and amendment of rules and ordinances and a means to solicit general public input on matters before the Commission pursuant to the HRS and County Codes of Ordinances."

Thus, a request for intervention regarding a subdivision application is not procedurally proper given the Subdivision Ordinance does not require an agency hearing or public hearing. Chapter 4 of the RPPPC states "the petition for intervention with certificate of service shall be filed with the Commission at least seven (7) days prior to the hearing for which notice to the public has been published pursuant to law." There is no hearing notice required for any subdivision action and therefore, no hearing is required, unlike the hearings associated with Use Permits and Class IV Zoning Permits. Therefore, Mr. Youn's attempt to intervene fails as a matter of law.

With regard to Mr. Youn's referenced appeal of the Planning Director's decision, he fails to cite the general applicability of RPPPC Rule 9, which is reserved for appeals by applicants and not interested persons. Further, RPPPC Rule 1-9-1 expressly forbids intervention pursuant to Chapter 4 of the RPPPC. Mr. Youn is clearly not an applicant. Therefore, his attempt to appeal a decision to issue Final Subdivision Map Approval also fails as a matter of law given Chapter 9 of the RPPPC is reserved for applicants who challenge a decision of the Planning Director affecting their property.

With regard to Mr. Youn's substantive issues, it appears he is attempting to re-litigate the Planning Commission's approval of the Gather Federal Credit Union's Use Permit U-2020-1 and Class IV Zoning Permit Z-IV-2020-1 (Gather FCU Permit) issued in 2019, which he attempted to file a motion for re-consideration but he missed the deadline to intervene in the Gather FCU Permit. He once again comes in late in the game after the Co-Applicant completed all necessary items related to the Tentative Subdivision Map Approval, including costs associated with designing the roadway and posting a letter of credit for the Subdivision Action.

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Mr. Youn's primary concern is the issue of the State Land Use Urban and County-zoned Residential (R-6) designations. As previously discussed with the Planning Commission, the portion of the lot disputed by Mr. Youn is a small sliver of land on the eastern portion of the Project area. Attached as *Exhibit "D"* is copy of the Kilauea Zoning Map ZM-KI-600, which clearly shows that the portion of the property in dispute is located in the SLUC Urban District and County-zoned Residential (R-6) District. Further, the State Land Use Commission's website shows that the disputed portion of the property is located in the State Land Use Commission Urban District. (See, *Exhibit "E"*). Therefore, both the State and County agencies charged with managing the location of the respective SLUC and Zoning boundaries confirm the locations of the SLUC Urban District and County-zoned Residential (R-6) District based on their mapping tools.

With regard to Mr. Youn's concern with affordable housing, the Co-Applicant has been in discussion with the Housing Director who has an interest in Lot 11-A-2-B-4 (24.209 acres), which is currently under appraisal with the County of Kauai. Further, Lot 11-A-2-B-2 (1.804 acres) has been of interest by affordable housing non-profit groups. Therefore, the Co-Applicant is already engaged with options to evaluate affordable housing opportunities in two of the resulting lots associated with the Subdivision Action.

Lastly, this Commission heard from Mr. Youn on this very issue during our request for extension and allowed the application to proceed. Further, it heard from Mr. Youn regarding the Gather FCU Permit and allowed it to proceed. Following the approval of the Gather FCU Permit, representatives from Gather FCU met with concerned citizens to understand their issues and they remain willing to address reasonable concerns.

As noted by the previous testimony by Mr. Youn and his significant other, their primary concern is that they live at the end of the cul-de-sac thinking no other improvements would be placed on the western side of their property. However, the concern of one is cleared outweighed by the community benefits this Project will provide in implementing the 2006 Kilauea Town Plan. The 2006 Kilauea Town Plan set a long-range planning goal to create the bypass road and additional housing. (See, *Exhibit "F"*). The intent of the Subdivision Action is to fulfill that vision and allow the County of Kauai to complete the road and bike path improvements.

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Therefore, we request that Mr. Youn's petition to intervene and/or appeal of the Planning Director's decision be dismissed for failing to meet the rules provided for in the RPPPC and that the Final Subdivision Map Approval be granted.

Thank you for your attention to this matter.

IKJ:jgm

Enclosures

cc: Mr. Ka'āina S. Hull, Planning Director, w/encls. (via email only)
Mr. Dale A. Cua, Chief Planner, w/encls. (via email only)
Mr. Andy Friend, w/encls. (via email only)

EXHIBIT "A"

MEMORANDUM OF UNDERSTANDING
(Kilauea Plateau Subdivision)

THIS MEMORANDUM OF UNDERSTANDING (Kilauea Plateau Subdivision) ("MOU") is entered into by and between KILAUEA OHANA PLATEAU, LLC, a Hawaii limited liability company ("KOP"), whose mailing address is 49455 Coachella Drive, La Quinta, California 92253, and the COUNTY OF KAUAI, a political subdivision of the State of Hawaii, whose mailing address is 4444 Rice Street, Suite 210, Lihue, Kauai, Hawaii 96766 ("County").

1. RECITALS.

1.1 KOP is the owner of certain property known as Unit F of the Namahana Acres Condominium located on Lot 11-A-2-B of the Pali Namahana Subdivision, Namahana, Hanalei, Kauai, Hawaii, identified by Kauai Tax Map Key No. (4) 5-2-005:023 (CPR No. 0006) ("Unit F").

1.2 KOP and the County wish to have the area comprising Unit F subdivided from the remainder of Lot 11-A-2-B (the "Subdivision") to create: a shared use path connecting Kilauea Town to the Kauapea Beach pedestrian access easement; and a new entry road connecting Kilauea Town to Kuhio Highway. To do this, the parties propose to subdivide Lot 11-A-2-B into ten (10) lots (collectively referred to as the "Subdivision Lots"), as shown on the draft map for the proposed Subdivision attached hereto as Exhibit "A" ("Subdivision Map"). The Subdivision Lots are more fully described in the Subdivision Lot Index attached hereto as Exhibit "B".

1.3 Pursuant to Section 8-8.3(c)(1) of the Comprehensive Zoning Ordinance ("CZO") (Title IV, Chapter 8 of the Kauai Code of Ordinances, 1987), the County wishes to be a co-applicant with KOP on the Subdivision application.

1.4 Upon final approval of the Subdivision, or at such later time as the County shall determine, KOP proposes to convey and dedicate to the County, for no consideration, Roadway Lot A and Multi-Use Path Lot.

2. AGREEMENT AND UNDERSTANDING.

2.1 Joint Application. KOP and the County agree to submit a joint application for the Subdivision to the Planning Commission of the County of Kauai ("Planning Commission") for approval with the Planning Department as the co-sponsor for the government exception to CZO Section 8-8.3(c)(1).

2.2 KOP Costs/Fees. Except as otherwise provided herein, KOP will be responsible for coordinating and supervising the Subdivision, and for paying all costs and fees associated with the processing of the Subdivision, including the cost of any studies required, including, without limitation, any archaeological surveys, as well as any on-site or off-site impact fees imposed by any County, state or federal agency, statute, regulation or ordinance.

2.3 Final Approval.

a. KOP shall file an application for the Subdivision no later than three (3) months after the Effective date.

b. KOP shall obtain final subdivision approval for the Subdivision ("Subdivision Approval") no later than two (2) years after the Effective Date.

c. In the event KOP fails to file and/or obtain Subdivision Approval by such deadline, then either party may cancel this MOU by providing the other party with written notice of such cancellation.

2.4 Improvements. KOP shall not be responsible for the design, construction and ongoing maintenance of any and all improvements within Roadway Lot A and Multi-Use Path Lot, including paying all costs and fees associated therewith. If or when such activities take place, such activities will be coordinated with KOP so as to cause the least interference with the activities of KOP and its tenants.

2.5 Dedication. The parties agree that until and unless a mutually agreeable dedication deed ("Dedication Deed") is executed and accepted by KOP and the County that conveys to the County all of its interest in and to Roadway Lot A and Multi-Use Path Lot, for no cost, the County shall have an indefinite option ("Option") to require KOP to convey Roadway Lot A and Multi-Use Path Lot to the County. KOP also agrees to grant a right-of-entry agreement ("Construction ROE") for an area not to exceed ten (10) feet from the boundaries of Roadway Lot A prior to construction of the improvements. Subject to mutual agreement, KOP and the County may agree to a larger Construction ROE area where additional drainage infrastructure is required. The County may exercise its Option at any time after Subdivision Approval by providing written notice to KOP. Prior to such conveyance, the County shall provide KOP with a current appraisal of Roadway Lot A and Multi-Use Path Lot. The County shall pay all recordation fees and conveyances taxes, if any. KOP shall own Roadway Lot A and the Multi-Use Path Lot free and clear of any rights of the County until such time as the County requires their conveyance. If the County fails to exercise its rights under the Option, then KOP shall own Roadway Lot A and the Multi-Use Path Lot free and clear of any rights of the County, and thereafter shall have no obligation to convey or dedicate said lots to the County. If the County exercises the Option, the Roadway Lot A and the Multi-Use Path Lot shall be used for roadway and multi-use path purposes. When exercising the Option, the County must accept both the Roadway Lot A and the Multi-Use Path Lot. KOP reserves the right, and the County agrees to in advance of the Option, that KOP shall be entitled to locate reasonable access, utility, and irrigation easements over and across Roadway Lot A and/or the Multi-Use Path Lot.

2.6 Conditions. The County shall be responsible for any and all conditions of Subdivision approval imposed by the Planning Commission applicable to Roadway Lot A and Lot Multi-Use Path Lot ("County Conditions") and KOP shall be responsible for any and all conditions of Subdivision approval imposed by the Planning Commission applicable to the remaining Subdivision Lots ("KOP Conditions"). In the event that the Planning Commission imposes conditions that either party, in its sole and absolute discretion, finds unacceptable, then such party shall have the right, in its sole and absolute discretion, to terminate the Subdivision and this MOU, without liability to the other party, including, without limitation, any liability for any costs incurred by the other party in processing the Subdivision. The County agrees that the Subdivision shall be deemed an exception to a "one time subdivision restriction", pursuant to Kauai County Code Section 8-8.3(c), and shall recommend that the final subdivision approval from the Planning Commission reflects the same. Notwithstanding anything else herein to the contrary, this Section 2.6 shall survive any termination of this MOU.

2.7 ROE. KOP agrees to draft and submit to the County a Right of Entry Agreement to provide the County a right-of-entry ("ROE") for the purpose of allowing the County, including its contractors and agents, to enter onto Roadway Lot A and Multi-Use Path Lot to conduct inspections, perform surveys, prepare studies, and to complete any other necessary tasks to accomplish compliance with state, county and federal rules and regulations prior to obtaining land use entitlements. The County shall not conduct any subsurface investigation, or construct, modify, or demolish any structure, except as provided in the ROE.

2.8 EA/EIS. The KOP will not be responsible for preparing, and paying the costs and expenses relating to, any Environmental Assessment or Environmental Impact Statement required pursuant to Hawaii Revised Statutes Chapter 343 arising out of or connected to any construction project for the road or shared use path.

2.9 Density Limitation. The parties understand and agree that Unit F currently has no dwelling unit density. The parties agree that, notwithstanding the approval of the Subdivision: Lots 11-A-2-B-3 through 11-A-2-B-6 shall continue to have no dwelling unit density within any portions of Lots 11-A-2-B-3 through 11-A-2-B-6 that are located within the CZO Open District or the CZO Agriculture District; Roadway Lot A, Roadway Lot B, and Multi-Use Path Lot shall have no dwelling unit density; and Lot 11-A-2-B-7 will have dwelling unit density as provided by law (which is currently five (5) farm dwelling units). Future dwelling unit density will only be allowed pursuant to CZO density standards applicable to those portions of Lot 11-A-2-B-3, Lot 11-A-2-B-4, Lot 11-A-2-B-5, and Lot 11-A-2-B-6 that are transferred into the State Land Use Commission Urban District or Rural District and into a CZO District other than the CZO Agriculture District.

2.10 Recordable Agreements. KOP shall draft and submit to the County for its approval a Density Limitation Agreement incorporating the provisions of Section 2.10 and an Option Agreement incorporating the provisions of Section 2.7. KOP shall have these agreements recorded in the Bureau of Conveyances of the State of Hawaii as a condition of final approval for Phase 2 of the Subdivision.

2.11 Improvements. The County agrees that it will not require construction plans for improvements to Roadway Lot A or Multi-Use Path Lot ("Improvements") be prepared, nor require such Improvements to be constructed, as a condition of Subdivision Approval. KOP's only obligation is to have Roadway Lot A and Multi-Use Path Lot subdivided from the remainder of Lot 11-A-2-B and to convey such lots in unimproved condition to the County at the County's request as more fully described herein.

3. GENERAL PROVISIONS.

3.1 Counterpart. This MOU may be executed in more than one counterpart, each of which shall be considered to be an original, but all of which shall constitute a single counterpart.

3.2 Modification of MOU. This MOU represents the entire agreement between the parties hereto and may not be modified or terminated, in whole or in part, except by another agreement in writing, duly executed by all of the parties.

3.3 Controlling Law. The performance and interpretation of this MOU shall be controlled by the laws of the State of Hawaii.

3.4 Rights and Obligations. The rights and obligations set forth herein shall be binding upon, and shall inure to the benefit of, the parties and their respective heirs, estates, personal representatives, successors, successors in trust and assigns.

3.5 Effective Date. This MOU shall not become effective and binding unless and until signed by all of the parties hereto. The effective date of this MOU shall be as of the date signed by the last party to sign.

3.6 Definitions. The terms "KOP", "County", "party" and "parties" when used in this MOU, or any pronouns used in their place, mean and include males or females, and one or more (or a combination of) real people, companies, corporations or other entities, and their and each of their respective heirs, devisees, personal representatives, successors, successors in trust and assigns, according to the context.

3.7 Facsimile/Email. The parties agree that facsimile and electronic mail (email) signatures of this MOU and any other documents related to this MOU shall be binding and effective for all purposes and treated in the same manner as physical signatures.

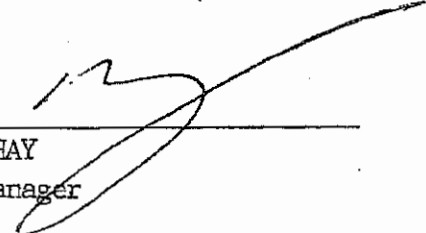
IN WITNESS WHEREOF, the parties have signed this MEMORANDUM OF
UNDERSTANDING (Kilauea Plateau Subdivision) effective on this _____ day of
_____, 20_____.

KOP:

KILAUEA OHANA PLATEAU, LLC,
a Hawaii limited liability company

By _____

BILL HAY
Its Manager

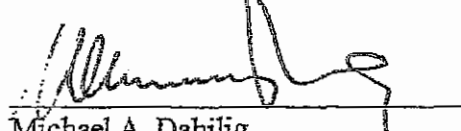


COUNTY:

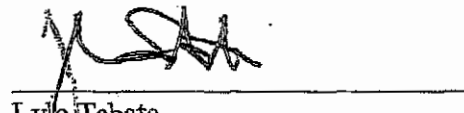
COUNTY OF KAUAI

By 
BERNARD P. CARVALHO, JR.
Its Mayor

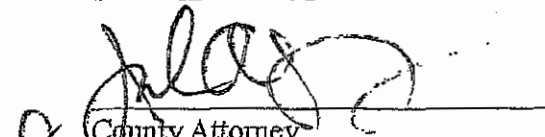
APPROVED AS TO FORM:


Michael A. Dahilig
Director of Planning
County of Kauai

APPROVED AS TO FORM:


Lyle Tabata
Acting County Engineer
County of Kauai

APPROVED AS TO FORM
AND LEGALITY:


County Attorney
County of Kauai

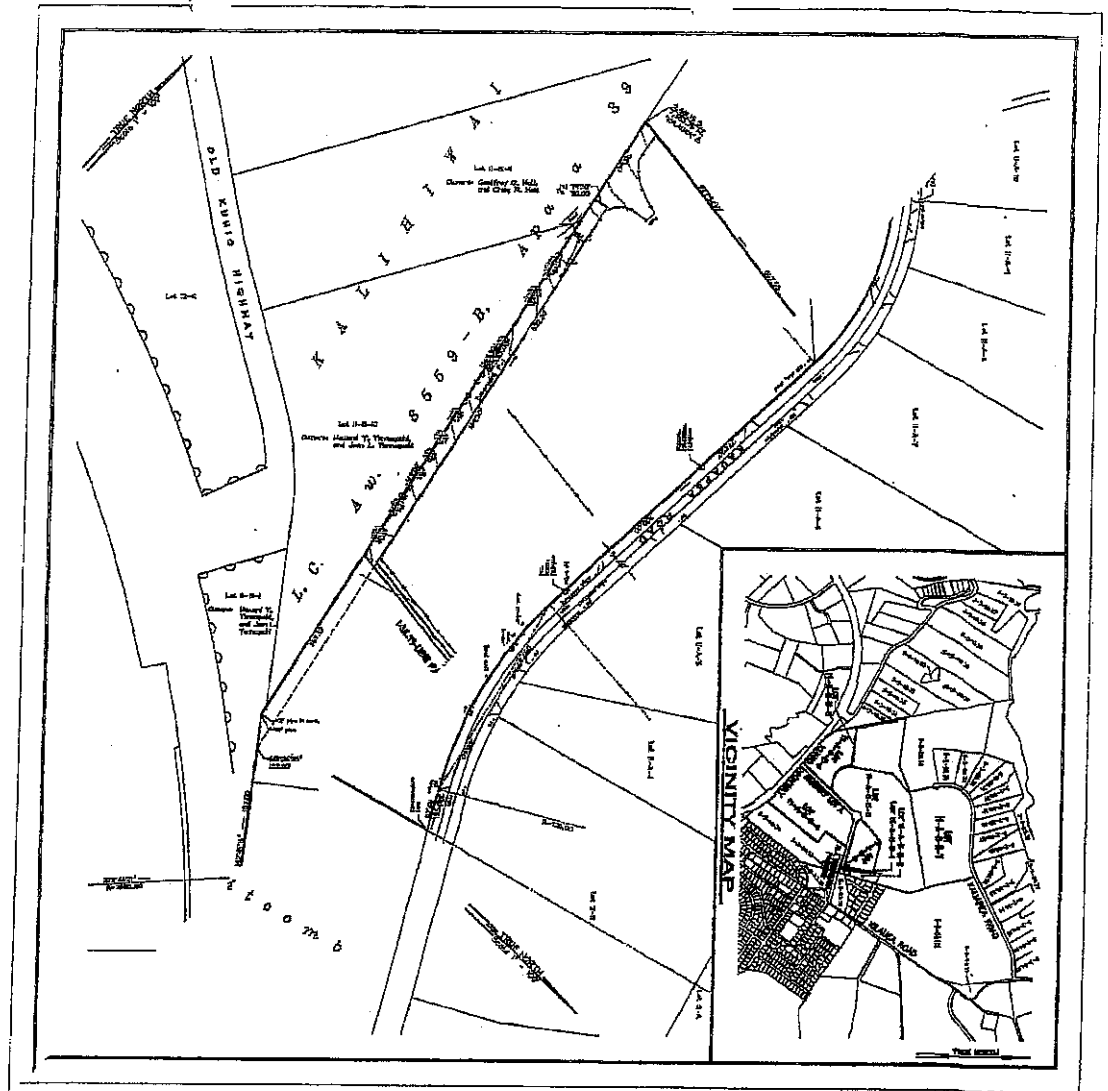


EXHIBIT "A"

EXHIBIT "B"

Donna Apisa
Chair

Glenda Nogami Streufert
Vice-Chair

Kanoe Ahuna
Kimo M. Keawe
Roy Ho
Sean Mahoney
Members



Michael A. Dahilig
Clerk of the Commission

PLANNING COMMISSION
County of Kauai, State of Hawaii
4444 Rice Street
Kapule Building, Suite A-473
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Dennis Esaki
Esaki Surveying & Mapping
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Lihu'e, Hawaii 96766

BELLES GRAHAM PROUDFOOT
WILSON & CHUN, LLP

Ian K. Jung, Esq.
Belles Graham Proudfoot Wilson & Chun, LLP.
Watumull Plaza
4334 Rice Street, Suite 202
Lihu'e, Hawaii 96766

Subject: Subdivision of Lot 11-A-2-B into Lots 11-A-2-B-1 through 11-A-2-B-7,
Roadway Lots A & B, and multi-Use Path Lot and designation of Easements W-
1, Being portion of Grant 630 to Jules Dudoit at Namahana, Hanalei, Kaua'i,
Hawaii. (S-2018-15, Kilauea Ohana Plateau LLC)

Subject subdivision was granted **TENTATIVE APPROVAL** by the Planning Commission at
their meeting held on September 11, 2018. Final approval will be granted subject to the
following conditions:

1. Requirements of the Planning Department:
 - a. An updated preliminary title report for each existing lot shall be submitted to the Planning Department for review
 - b. All existing and proposed easements, if any, shall be identified in the deed descriptions of the affected lots, draft copies of which shall be submitted to the Planning Department for review and approval.
 - c. Pursuant to Section 9-3.8(b) of the Subdivision Ordinance, Kaua'i County Code (1987), the Applicant shall submit to the Planning Department an electronic record

An Equ

EXHIBIT "B"

(digitized format) of the final subdivision map(s) on disk for record keeping purposes prior to final subdivision approval.

- d. The Applicant shall pay a Park Dedication fee pursuant to Section 9-2.8 of the Kaua'i County Code Subdivision Ordinance. An appraisal report and price list shall be provided to the Planning Department to forward to the Real Properties Division to help calculate the fee amount.
- e. An Environmental Impact Assessment Fee of One Thousand Five Hundred Dollars (\$1,500.00) shall be paid to the County of Kaua'i.
- f. Newly created Lots 11-A-2-B-3 through 11-A-2-B-6 shall have no dwelling density. However, Lot 11-A-2-B-7 has a max dwelling density of five (5) units and this provision should be incorporated into the deed description of the subject parcels.
- g. As proposed, Lot 11-A-2-B-7 does not comply with the lot configuration requirement prescribed in Section 8-8.3(e) of the Comprehensive Zoning Ordinance (CZO). Prior to final subdivision map approval, the Applicant shall work with the Planning Department to comply with the foregoing standard.
- h. As proposed, Lots 11-A-2-B-1 and 11-A-2-B-2 does not comply with the minimum lot size requirement prescribed in Section 8-8.3(b) of the Comprehensive Zoning Ordinance (CZO). All lots within the proposed development shall comply with the foregoing standard prior to final subdivision map approval.
- i. Due to the topography in the area and relative to the roadway improvements for Roadway Lot A and Road way Lot B, there shall be cut and fill reserves established to facilitate actual construction of the roadway (if necessary). The locations and extent of these reserves shall be resolved with the Department of Public Works and shall be shown on the final map. There shall be no new structures permitted within the reserves; new structures should be setback from the reserves. The reserves along with the restrictions shall be identified in the deed descriptions, draft copies of which shall be submitted to the Planning Department for review and approval.
- j. The Applicant shall prepare and obtain construction plan approvals for necessary road, water, drainage, electrical and telephone utilities and facilities, and either construct the same or post a surety bond for completion.
- k. The applicant is made aware that the streets designated within the subdivision must be officially named before the Department approves the construction plans. Street names should be in Hawaiian and be submitted to our Department for review and approval, along with a request letter and 12 maps (on 8½" x 14" paper). The maps

should be detailed such that emergency vehicles, police services, postal deliveries, etc., are able to locate the street. References to roadway, such as the highway and other surrounding roads, should be shown on the street-naming map.

- l. The applicant is advised that uses on the newly-created lots shall be limited to those listed as permissible uses within the "A" Agricultural District in the State Land Use Commission Rules and Regulations. Dwellings on the lot shall mean a single-family dwelling located on and used in connection with a farm where agriculture activity provides income to the family occupying the dwelling. These restrictions shall be included in the covenants for the proposed lots, draft copies of which shall be submitted to the Planning Department for review and approval.
 - m. As represented by the applicant, Roadway Lot A and the Shared Multi-Use Path Lot shall be dedicated to the County of Kaua'i. As such, proper documents shall be prepared by the applicant and be ready for execution prior to final subdivision map approval.
 - n. The applicant is advised that the subject subdivision application shall be exempt from the "one-time" agricultural subdivision restriction, per section 8-8.3(c) of the CZO, since it is a subdivision requested for public utility purposes.
2. Requirements of the Department of Water (DOW):
- a. Locate and show existing water meter/s (with appropriate meter number) on the subdivision map for DOW's review and approval. Also, identify the proposed subdivision lot the existing water meters will be assigned to. DOW comment may change depending on the approved tentative map.
 - b. For Lots 11-A-2-B-1 through 11-A-2-B-6, clearly letter on the final subdivision map and deeds:
 - i) "Domestic water service is not available from the Department of Water, County of Kauai."
 - ii) "Prior to building permit approvals, the applicant shall either complete a Waiver and Release Agreement with the Department of Water, County of Kaua'i or submit a copy of the deeds of the lot to the Department of Water that state that domestic water service is not available from the Department of Water, County of Kaua'i."

This deed restriction shall be recorded with the Bureau of Conveyances within ninety (90) days of the final subdivision approval by the Planning Department.

- c. The water system improvements required for Kilauea Lighthouse Village – Kilauea Road and Ala Namahana Parkway Improvements must be completed and certification of Completion for the project must be issued by the DOW.

3. Requirements for Department of Public Works(DPW):

FORM & CONTENT OF MAP & SUPPLEMTNAL DOCUMENTS:

- a. The map does not comply with Section 3.031-J Form and Content of the Map of the Subdivision Ordinance No. 175. Paragraph J States "All maps shall show pertinent topographical information such as slopes and shapes of the land, approximate elevations, watercourses and drainage ways, and other information affecting the design of the subdivision." Additionally, the map needs to show the existing pavement width and whether the abutting roadways are paved and where the pavement ends. We recommend that the preliminary map be returned for the required information.

DRAINAGE:

- b. The Subdivision and subsequent development of residences and other impermeable surfacing will increase storm water flows rates. A drainage study needs to be made to evaluate the impacts of the increased storm runoffs. Measures to keep flow to pre-development conditions are required. Provisions need to be established to prevent structures from being built in flood prone areas and to preserve the natural function and capacity of the watercourses.

ROAD:

- c. The widened area of ROADWAY LOT A near the stream crossing should be extended to the northeast (on both sides of the lot) until it meets the bulge for the future roundabout.
- d. The 10' construction right-of-entry should also be shown along ROADWAY LOT A on the southeast side of the widened area near the stream crossing.
- e. Change the name of the MULTI-USE PATH LOT to "SHARE USE PATH LOT" or simply "PATH LOT" or "PATH LOT C." This lot must be widened to 20 feet and include a 100' radius where the lot bends around Lot 11-A-2-B-5, as shown in the earlier draft versions of this subdivision map. The PATH LOT must also include a 50' radius (minimum) at the location where this lot bends around Lot 11-A-2-B-7.

OTHERS:

- f. A grading permit will be required for this project. The property size is more than 10 acres. The maximum area that may be opened for grading or grubbing at any one time is ten (10) acres. The area of land that may be opened shall not exceed ten (10) acres. Grading/grubbing shall be accomplished in increments not more than 10 acres. Best Management Practices (BMP's) shall be provided at all times to the maximum extent practicable to prevent damage by sedimentation, erosion and dust to streams, water courses, natural areas and the properties of others.

4. Requirements for State Department of Health:

- a. All structures and wastewater disposal systems are not shown on the subdivision map. The State of Hawaii Department of Health (DOH) Wastewater Branch will not recommend final approval of the subdivision application until we have information on existing wastewater system. The applicant must have his/her engineer or contractor submit a completed exiting cesspool information card for each cesspool, identifying the location of all wastewater systems both cesspools and septic systems with associated structures and their relationship to existing and proposed property lines. Please add existing septic system to the subdivision map.
- b. The property may harbor rodents which will be dispersed to the surrounding areas when the site is cleared. In accordance with Chapter 11-26, entitled "Vector Control", Title 11, HAR, the applicant shall ascertain the presence or absence of rodents on the property. Should the presence of rodents be determined, the applicant shall eradicate the rodents prior to clearing the site.
- c. Noise will be generated when construction occurs on after the subdivision. The applicable maximum permissible sound levels as stated in Title 11, Hawaii Administrative Rules (HAR), Chapter 11-46, "Community Noise Control", shall not be exceeded, unless a noise permit is obtained from the State Department of Health (DOH).
- d. Temporary fugitive dust emissions during site preparation and construction could impact the nearby residents when the subdivided lots are developed. In accordance with Chapter 11-60.1, entitled "Air Pollution Control", Title 11, HAR, effective air pollution control measures shall be provided to minimize or prevent any fugitive dust emission from impacting the surrounding areas. This includes but are not limited to the use of water wagons, sprinkler systems, dust fences, etc.
- e. In accordance with Title 11, HAR, Chapter 11-58.1, "Solid Waste Management Control", when the lot is further developed, the grubbed material and construction waste that is generated shall be either recycled or disposed of at a solid waste

disposal facility that complies with the DOH. The open burning of any of these wastes on or off site prohibited.

- f. The Department of Health (DOH), Clean Water Branch (CWB) has reviewed the subject document and offers these comments. Please note that our review is based solely on the information provided in the subject documents and its compliance with the Hawaii Administrative Rules (HAR), Chapters 11-54 and 11-55. You may be responsible for fulfilling additional requirements related to our program. We recommend that you also read our standard comments on our website at: <http://health.hawaii.gov/epo/files/2013/05/Clean-Water-Branch-Std-Comments.pdf>
- g. Any project and its potential impacts to State waters must meet the following criteria:
 - a. Antidegradation policy (HAR, Section 11-54-1.1), which requires that the existing uses and the level of water quality necessary to protect the existing uses of the receiving State water be maintained and protected.
 - b. Designated uses (HAR, Section 11-54-3), as determined by the classification of the receiving State waters.
 - c. Water quality criteria (HAR, Sections 11-54-4 through 11-54-8).
- h. You may be required to obtain National Pollutant Discharge Elimination System (NPDES) general permit coverage, for discharges of wastewater, including storm water runoff, into State surface waters (HAR, Chapter 11-55).

For NPDES general permit coverage, a Notice of Intent (NOI) form must be submitted at least 30 calendar days before the commencement of the discharge. An application for a NPDES individual permit must be submitted at least 180 calendar days before the commencement of the discharge. To request NPDES permit form" or CWB NOI Form") through the e-Permitting Portal and the hard copy certification statement with the respective filing fee (\$1,000 for an individual NPDES permit or \$500 for a Notice of General Permit Coverage). Please open the e-permitting portal website located at: <https://eha-cloud.doh.hawaii.gov/epermit/>. You will be asked to do a one-time registration to obtain your login and password. After you register, click on the Application Finder tool and locate the appropriate form. Follow the instructions to complete and submit the form.

- i. If your project involves work in, over, or under waters of the United States, it is highly recommended that you contact the Army Corp of Engineers, Regulatory Branch (Tel: 835-4303) regarding their permitting requirements.

Pursuant to Federal water Pollution Control Act [commonly known as the "Clean Water Act"] Paragraph 401(a)(1), a Section 401 Water Quality Certification (WQC) is required for "[any applicant for Federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities, which may result in any discharge into the navigable waters..." The term "discharge" is defined in CWA, Subsections 502(16), 502(12), and 502(6); Title 40 of the Code of Federal Regulations, Section 122.2; and Hawaii Administrative Rules (HAR), Chapter 11-54.

- j. Please note that all discharge related to the project construction or operation activities, whether or not NPDES permit coverage and/or Section 401 WQC are required, must comply with the State's Water Quality Standards. Noncompliance with water quality requirements contained in HAR, Chapter 11-54, and/or permitting requirements, specified in HAR, Chapter 11-55, may be subject to penalties of \$25,000 per day per violation.
- k. It is the State's position that all projects must reduce, reuse, and recycle to protect, restore, and sustain water quality and beneficial uses of State waters. Project planning should:
 - a. Treat storm water as a resource to be protected by integrating it into project planning and permitting. Storm water has long been recognized as a source or irrigation that will not deplete potable water resources. What is often overlooked is that storm water recharges ground water supplies and feeds streams and estuaries; to ensure that these water cycles are not disturbed, storm water cannot be regulated as a waste product of impervious surface. Any project planning must recognize storm water as an asset that sustains and protects natural ecosystems and traditional beneficial uses of the State waters, like community beautification, beach going, swimming, and fishing. The approaches necessary to do so, including low impact development methods or ecological bioengineering of drainage ways must be identified in planning stages to allow designers opportunity to include those approaches up front, prior to seeking zoning, construction, or building permits.
 - b. Clearly articulate the State's position on water quality and the beneficial uses of State waters. The plan should include statements regarding the implementation of methods to conserve natural resources (e.g. minimizing potable water for irrigation, gray water re-use options, energy conservation through smart design) and improve water quality.

- c. Consider storm water Best Management Practice (BMP) approaches that minimize the use of potable water for irrigation through storm water storage and reuse, percolate storm water to recharge ground water to revitalize natural hydrology, and treat storm water which is to be discharged.
- d. Consider the use of green building practices, such as pervious pavement and landscaping with native vegetation, to improve water quality by reducing excessive runoff and the need for excessive fertilization, respectively.
- e. Identify opportunities for retrofitting or bio-engineering existing storm water infrastructure to restore ecological function while maintaining, or even enhancing, hydraulic capacity. Particular consideration should be given to areas prone to flooding, or where the infrastructure is aged and will need to be rehabilitated.

If you have any questions, please visit our website at:

<http://health.hawaii.gov/cwb/>, or contact the Engineering Section, CWB, at (808)586-5309

- L. National Pollutant Discharge Elimination System (NPDES) permit coverage is required for pollutant discharge into State surface waters and for certain situations involving storm water (HAR, Chapter 11-55).
 - a. Discharge into Class 2 or Class A State waters can be covered under an NPDES general permit only if all of the NPDES general permit requirements are met. Please see the DOH-CWB website (<http://health.hawaii.gov/cwb/>) for the NPDES general permits and instructions to request coverage.
 - b. All other discharges into State surface waters (including discharges from Concentrated Animal Feeding Operations) and discharges into Class 1 or Class AA State waters require an NPDES individual permit. To request NPDES individual permit coverage, please see the DOH-CWB forms website located at: <http://health.hawaii.gov/cwb/site-map/clean-water-branch-home-page/forms/>
 - c. NPDES permit coverage for storm water associated with construction activities is required if your project will result in the disturbance of one (1) acre or more of total land area. The total land area includes a contiguous area where multiple separate and distinct construction activities may be taking place at different times on different schedules under a larger common plan of development or sale. NPDES permit coverage is required before the start of the construction activities.

Land disturbance includes, but is not limited to clearing, grading, grubbing, uprooting of vegetation, demolition (even if leaving foundation slab), staging, stockpiling, excavation into pavement areas which go down to the base course, and storage areas (including areas on the roadway to park equipment if these areas are blocked off from public usage, grassed areas, or bare ground).

- m. Please note that all discharges related to the project construction or operation activities, whether or not NPDES permit coverage and/or Section 401 WQC are required, must comply with the State's Water Quality Standards. Noncompliance with water quality requirements contained in HAR, Chapter 11-54, and/or permitting requirements, specified in HAR, Chapter 11-55, may be subject to penalties of \$25,000 per day per violation.
5. Requirements of the State Department of Transportation (DOT):
- a. Please provide land use/ development the roadway and intersection are intended to support. The intersection should be designed for the identified land use.
 - b. Kūhiō Highway is denoted "no vehicle access permitted" at the location of the proposed intersection. Access rights must be requested from HDOT.
 - c. The Applicant shall provide the State DOT the status of the LUC and County zoning process for the development?
 - d. The Applicant shall provide the State DOT whether an EIS and/or TIAR have been completed for the development?
6. The Applicant is advised the should any archaeological or historical resources be discovered during ground disturbing/construction work, all work in the area of the archaeological/historical findings shall immediately cease and the applicant shall contact the State Department of Land and Natural Resources, Historic Preservation Division and the Planning Department to determine mitigation measures.
7. The Applicant is advised that prior to and/or during construction and use additional conditions may be imposed by government agencies. Should this occur, the Applicant shall resolve these conditions with the respective agency(ies).

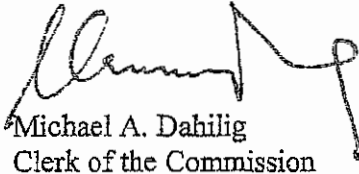
You are hereby informed that the final subdivision map must be filed within one (1) year after the tentative approval date in order to obtain final approval. If not filed, the preliminary

Dennis M. Esaki, PE/Esaki Surveying & Mapping
Ian K. Jung, Esq./Belles Graham Proudfoot Wilson & Chun, LLP.
Kilauea Plateau Subdivision, S-2018-15
Page 10 of 11

subdivision map and construction plan, if any, shall become null and void unless an extension of time, not to exceed six (6) months, is granted by the Planning Commission.

Dennis M. Esaki, PE/Esaki Surveying & Mapping
Ian K. Jung, Esq./Belles Graham Proudfoot Wilson & Chun, LLP.
Kilauea Plateau Subdivision, S-2018-15
Page 11 of 11

Sincerely Yours,



Michael A. Dahilig
Clerk of the Commission

xc: COK Public Works Dept.
COK Water Dept.
State Dept. Health
State Dept. Highways

EXHIBIT "C"

**FIRST AMENDMENT TO
MEMORANDUM OF UNDERSTANDING
(Kilauea Plateau Subdivision)**

THIS FIRST AMENDMENT TO MEMORANDUM OF UNDERSTANDING (Kilauea Plateau Subdivision) ("First Amendment") is entered into by and between KILAUEA OHANA PLATEAU, LLC, a Hawaii limited liability company ("KOP"), whose mailing address is 49455 Coachella Drive, La Quinta, California 92253, and the COUNTY OF KAUAI, a political subdivision of the State of Hawaii, whose mailing address is 4444 Rice Street, Suite 210, Lihue, Kauai, Hawaii 96766 ("County").

I. RECITALS

WHEREAS, KOP and the County entered into that certain undated Memorandum Of Understanding (Kilauea Plateau Subdivision) ("MOU") to memorialize the co-applicant's obligations for the completion of the project, attached hereto as Exhibit "A".

WHEREAS, KOP is the owner of certain property known as Unit F of the Namahana Acres Condominium located on Lot 11-A-2-B of the Pali Namahana Subdivision, Namahana, Hanalei, Kauai, Hawaii, identified by Kauai Tax Map Key No. (4) 5-2-005:023 (CPR No. 0006) ("Unit F").

WHEREAS, KOP and the County wish to have the area comprising Unit F subdivided from the remainder of Lot 11-A-2-B (the "Subdivision") in order to create: a multi-use path connecting Kilauea Town to the Kauapea Beach pedestrian access easement; and a new entry road connecting Kilauea Town to Kuhio Highway. To do this, the parties propose to subdivide Lot 11-A-2-B into ten (10) lots ("Subdivision Lots"), as shown on the revised Preliminary Subdivision Map for the proposed Subdivision attached hereto as Exhibit "B" ("Subdivision Map"). The Subdivision Lots are more fully described in the Subdivision Lot Index, attached hereto as Exhibit "C", as amended by this First Amendment.

WHEREAS, the County wishes to be a co-applicant with KOP on the Subdivision application process in order to satisfy the provisions contained in Section 8-8.3(c)(1) of the Comprehensive Zoning Ordinance (Title IV, Chapter 8 of the Kauai Code of Ordinances, 1987).

WHEREAS, KOP applied for the Subdivision and the County issued Preliminary Subdivision Approval on September 20, 2018 pursuant to Subdivision No. S-2018-15.

WHEREAS, the County approved the Preliminary Subdivision Map with conditions attached as provided for in Exhibit "D".

WHEREAS, pursuant to the Preliminary Subdivision Approval, the County required the Subdivision Map to be modified along with additional restrictions.

WHEREAS, the purpose of this First Amendment is to reflect the modifications to the Subdivision Map, Subdivision Map Index, and to reference additional conditions required by the Department of Public Works, Engineering Division, noted in the Preliminary Subdivision Approval.

WHEREAS, upon final approval of the Subdivision, or at such later time as the County shall determine, KOP proposes to convey and dedicate to the County, for no consideration, Roadway Lot A and Path Lot.

II. AMENDMENT

Pursuant to Section 3.2 of the MOU, the County and KOP agree to modify the following section, and relevant exhibits, as follows:

"2.9 Density Limitation. The parties understand and agree that Unit F currently has no dwelling unit density. The parties agree that, notwithstanding the approval of the Subdivision: Lots 11-A-2-B-3 through 11-A-2-B-6 shall continue to have no dwelling unit density within any portions of Lots 11-A-2-B-3 through 11-A-2-B-6 that are located within the CZO Open District or the CZO Agriculture District; Roadway Lot A, Roadway Lot B, and Lot 11-A-2-B-8 shall have no dwelling unit density; and Lot 11-A-2-B-7 will have dwelling unit density as provided by law (which is currently five (5) farm dwelling units). Future dwelling unit density will only be allowed pursuant to CZO density standards applicable to those portions of Lot 11-A-2-B-3, Lot 11-A-2-B-4, Lot 11-A-2-B-5, and Lot 11-A-2-B-6 that are transferred into the State Land Use Commission Urban District or Rural District and into a CZO District other than the CZO Agriculture District. Moreover, no dwelling units or agricultural structures shall be constructed on Lots 11-A-2-B-3, Lot 11-A-2-B-4, Lot 11-A-2-B-5, and Lot 11-A-2-B-6 until such time the Department of Public Works, Engineering Division, reviews and makes a determination as to whether a flood study is required for the future dwelling units or agricultural structures."

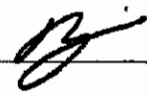
Exhibit "A" to the MOU shall be replaced with the attached Exhibit "B" to this First Amendment as the revised Subdivision Map.

Exhibit "B" to the MOU shall be replaced with the attached Exhibit "C" to this First Amendment as the revised Subdivision Map Index.

IN WITNESS WHEREOF, the parties have signed this FIRST AMENDMENT TO
MEMORANDUM OF UNDERSTANDING (Kilauea Plateau Subdivision) effective on this
22nd day of July, 2019.

KOP:

KILAUEA OHANA PLATEAU, LLC,
a Hawaii limited liability company

By 
BILL HAY
Its Manager

COUNTY:

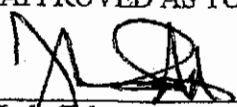
COUNTY OF KAUAI

By 
DEREK S. K. KAWAKAMI
Its Mayor

APPROVED AS TO FORM:


Karaina S. Hull
Director of Planning, County of Kauai

APPROVED AS TO FORM:


Lyle Tabata
Deputy County Engineer
County of Kauai

APPROVED AS TO FORM
AND LEGALITY:

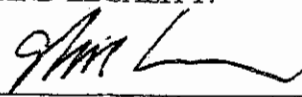

County Attorney, County of Kauai

EXHIBIT "A"

MEMORANDUM OF UNDERSTANDING
(Kilauea Plateau Subdivision)

THIS MEMORANDUM OF UNDERSTANDING (Kilauea Plateau Subdivision) ("MOU") is entered into by and between KILAUEA OHANA PLATEAU, LLC, a Hawaii limited liability company ("KOP"), whose mailing address is 49455 Coachella Drive, La Quinta, California 92253, and the COUNTY OF KAUAI, a political subdivision of the State of Hawaii, whose mailing address is 4444 Rice Street, Suite 210, Lihue, Kauai, Hawaii 96766 ("County").

1. RECITALS.

1.1 KOP is the owner of certain property known as Unit F of the Namahana Acres Condominium located on Lot 11-A-2-B of the Pali Namahana Subdivision, Namahana, Hanalei, Kauai, Hawaii, identified by Kauai Tax Map Key No. (4) 5-2-005:023 (CPR No. 0006) ("Unit F").

1.2 KOP and the County wish to have the area comprising Unit F subdivided from the remainder of Lot 11-A-2-B (the "Subdivision") to create: a shared use path connecting Kilauea Town to the Kauapea Beach pedestrian access easement; and a new entry road connecting Kilauea Town to Kuhio Highway. To do this, the parties propose to subdivide Lot 11-A-2-B into ten (10) lots (collectively referred to as the "Subdivision Lots"), as shown on the draft map for the proposed Subdivision attached hereto as Exhibit "A" ("Subdivision Map"). The Subdivision Lots are more fully described in the Subdivision Lot Index attached hereto as Exhibit "B".

1.3 Pursuant to Section 8-8.3(c)(1) of the Comprehensive Zoning Ordinance ("CZO") (Title IV, Chapter 8 of the Kanai Code of Ordinances, 1987), the County wishes to be a co-applicant with KOP on the Subdivision application.

1.4 Upon final approval of the Subdivision, or at such later time as the County shall determine, KOP proposes to convey and dedicate to the County, for no consideration, Roadway Lot A and Multi-Use Path Lot.

2. AGREEMENT AND UNDERSTANDING.

2.1 Joint Application. KOP and the County agree to submit a joint application for the Subdivision to the Planning Commission of the County of Kauai ("Planning Commission") for approval with the Planning Department as the co-sponsor for the government exception to CZO Section 8-8.3(c)(1).

2.2 KOP Costs/Fees. Except as otherwise provided herein, KOP will be responsible for coordinating and supervising the Subdivision, and for paying all costs and fees associated with the processing of the Subdivision, including the cost of any studies required, including, without limitation, any archaeological surveys, as well as any on-site or off-site impact fees imposed by any County, state or federal agency, statute, regulation or ordinance.

2.3 Final Approval.

a. KOP shall file an application for the Subdivision no later than three (3) months after the Effective date.

b. KOP shall obtain final subdivision approval for the Subdivision ("Subdivision Approval") no later than two (2) years after the Effective Date.

c. In the event KOP fails to file and/or obtain Subdivision Approval by such deadline, then either party may cancel this MOU by providing the other party with written notice of such cancellation.

2.4 Improvements. KOP shall not be responsible for the design, construction and ongoing maintenance of any and all improvements within Roadway Lot A and Multi-Use Path Lot, including paying all costs and fees associated therewith. If or when such activities take place, such activities will be coordinated with KOP so as to cause the least interference with the activities of KOP and its tenants.

2.5 Dedication. The parties agree that until and unless a mutually agreeable dedication deed ("Dedication Deed") is executed and accepted by KOP and the County that conveys to the County all of its interest in and to Roadway Lot A and Multi-Use Path Lot, for no cost, the County shall have an indefinite option ("Option") to require KOP to convey Roadway Lot A and Multi-Use Path Lot to the County. KOP also agrees to grant a right-of-entry agreement ("Construction ROE") for an area not to exceed ten (10) feet from the boundaries of Roadway Lot A prior to construction of the improvements. Subject to mutual agreement, KOP and the County may agree to a larger Construction ROE area where additional drainage infrastructure is required. The County may exercise its Option at any time after Subdivision Approval by providing written notice to KOP. Prior to such conveyance, the County shall provide KOP with a current appraisal of Roadway Lot A and Multi-Use Path Lot. The County shall pay all recordation fees and conveyances taxes, if any. KOP shall own Roadway Lot A and the Multi-Use Path Lot free and clear of any rights of the County until such time as the County requires their conveyance. If the County fails to exercise its rights under the Option, then KOP shall own Roadway Lot A and the Multi-Use Path Lot free and clear of any rights of the County, and thereafter shall have no obligation to convey or dedicate said lots to the County. If the County exercises the Option, the Roadway Lot A and the Multi-Use Path Lot shall be used for roadway and multi-use path purposes. When exercising the Option, the County must accept both the Roadway Lot A and the Multi-Use Path Lot. KOP reserves the right, and the County agrees to in advance of the Option, that KOP shall be entitled to locate reasonable access, utility, and irrigation easements over and across Roadway Lot A and/or the Multi-Use Path Lot.

2.6 Conditions. The County shall be responsible for any and all conditions of Subdivision approval imposed by the Planning Commission applicable to Roadway Lot A and Lot Multi-Use Path Lot ("County Conditions") and KOP shall be responsible for any and all conditions of Subdivision approval imposed by the Planning Commission applicable to the remaining Subdivision Lots ("KOP Conditions"). In the event that the Planning Commission imposes conditions that either party, in its sole and absolute discretion, finds unacceptable, then such party shall have the right, in its sole and absolute discretion, to terminate the Subdivision and this MOU, without liability to the other party, including, without limitation, any liability for any costs incurred by the other party in processing the Subdivision. The County agrees that the Subdivision shall be deemed an exception to a "one time subdivision restriction", pursuant to Kauai County Code Section 8-8.3(c), and shall recommend that the final subdivision approval from the Planning Commission reflects the same. Notwithstanding anything else herein to the contrary, this Section 2.6 shall survive any termination of this MOU.

2.7 ROE. KOP agrees to draft and submit to the County a Right of Entry Agreement to provide the County a right-of-entry ("ROE") for the purpose of allowing the County, including its contractors and agents, to enter onto Roadway Lot A and Multi-Use Path Lot to conduct inspections, perform surveys, prepare studies, and to complete any other necessary tasks to accomplish compliance with state, county and federal rules and regulations prior to obtaining land use entitlements. The County shall not conduct any subsurface investigation, or construct, modify, or demolish any structure, except as provided in the ROE.

2.8 EA/EIS. The KOP will not be responsible for preparing, and paying the costs and expenses relating to, any Environmental Assessment or Environmental Impact Statement required pursuant to Hawaii Revised Statutes Chapter 343 arising out of or connected to any construction project for the road or shared use path.

2.9 Density Limitation. The parties understand and agree that Unit F currently has no dwelling unit density. The parties agree that, notwithstanding the approval of the Subdivision: Lots 11-A-2-B-3 through 11-A-2-B-6 shall continue to have no dwelling unit density within any portions of Lots 11-A-2-B-3 through 11-A-2-B-6 that are located within the CZO Open District or the CZO Agriculture District; Roadway Lot A, Roadway Lot B, and Multi-Use Path Lot shall have no dwelling unit density; and Lot 11-A-2-B-7 will have dwelling unit density as provided by law (which is currently five (5) farm dwelling units). Future dwelling unit density will only be allowed pursuant to CZO density standards applicable to those portions of Lot 11-A-2-B-3, Lot 11-A-2-B-4, Lot 11-A-2-B-5, and Lot 11-A-2-B-6 that are transferred into the State Land Use Commission Urban District or Rural District and into a CZO District other than the CZO Agriculture District.

2.10 Recordable Agreements. KOP shall draft and submit to the County for its approval a Density Limitation Agreement incorporating the provisions of Section 2.10 and an Option Agreement incorporating the provisions of Section 2.7. KOP shall have these agreements recorded in the Bureau of Conveyances of the State of Hawaii as a condition of final approval for Phase 2 of the Subdivision.

2.11 Improvements. The County agrees that it will not require construction plans for improvements to Roadway Lot A or Multi-Use Path Lot ("Improvements") be prepared, nor require such Improvements to be constructed, as a condition of Subdivision Approval. KOP's only obligation is to have Roadway Lot A and Multi-Use Path Lot subdivided from the remainder of Lot 11-A-2-B and to convey such lots in unimproved condition to the County at the County's request as more fully described herein.

3. GENERAL PROVISIONS.

3.1 Counterpart. This MOU may be executed in more than one counterpart, each of which shall be considered to be an original, but all of which shall constitute a single counterpart.

3.2 Modification of MOU. This MOU represents the entire agreement between the parties hereto and may not be modified or terminated, in whole or in part, except by another agreement in writing, duly executed by all of the parties.

3.3 Controlling Law. The performance and interpretation of this MOU shall be controlled by the laws of the State of Hawaii.

3.4 Rights and Obligations. The rights and obligations set forth herein shall be binding upon, and shall inure to the benefit of, the parties and their respective heirs, estates, personal representatives, successors, successors in trust and assigns.

3.5 Effective Date. This MOU shall not become effective and binding unless and until signed by all of the parties hereto. The effective date of this MOU shall be as of the date signed by the last party to sign.

3.6 Definitions. The terms "KOP", "County", "party" and "parties" when used in this MOU, or any pronouns used in their place, mean and include males or females, and one or more (or a combination of) real people, companies, corporations or other entities, and their and each of their respective heirs, devisees, personal representatives, successors, successors in trust and assigns, according to the context.

3.7 Facsimile/Email. The parties agree that facsimile and electronic mail (email) signatures of this MOU and any other documents related to this MOU shall be binding and effective for all purposes and treated in the same manner as physical signatures.

IN WITNESS WHEREOF, the parties have signed this MEMORANDUM OF
UNDERSTANDING (Kilauea Plateau Subdivision) effective on this _____ day of
_____, 20_____.

KOP:

KILAUEA OHANA PLATEAU, LLC,
a Hawaii limited liability company

By _____

BILL HAY
Its Manager

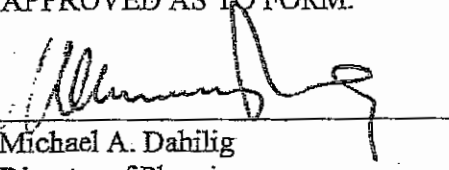
COUNTY:

COUNTY OF KAUAI

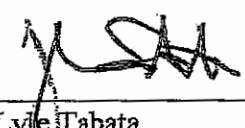
By 

BERNARD P. CARVALHO, JR.
Its Mayor

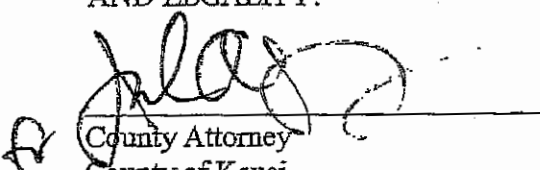
APPROVED AS TO FORM:


Michael A. Dahilig
Director of Planning
County of Kauai

APPROVED AS TO FORM:


Lyle Tabata
Acting County Engineer
County of Kauai

APPROVED AS TO FORM
AND LEGALITY:


County Attorney
County of Kauai

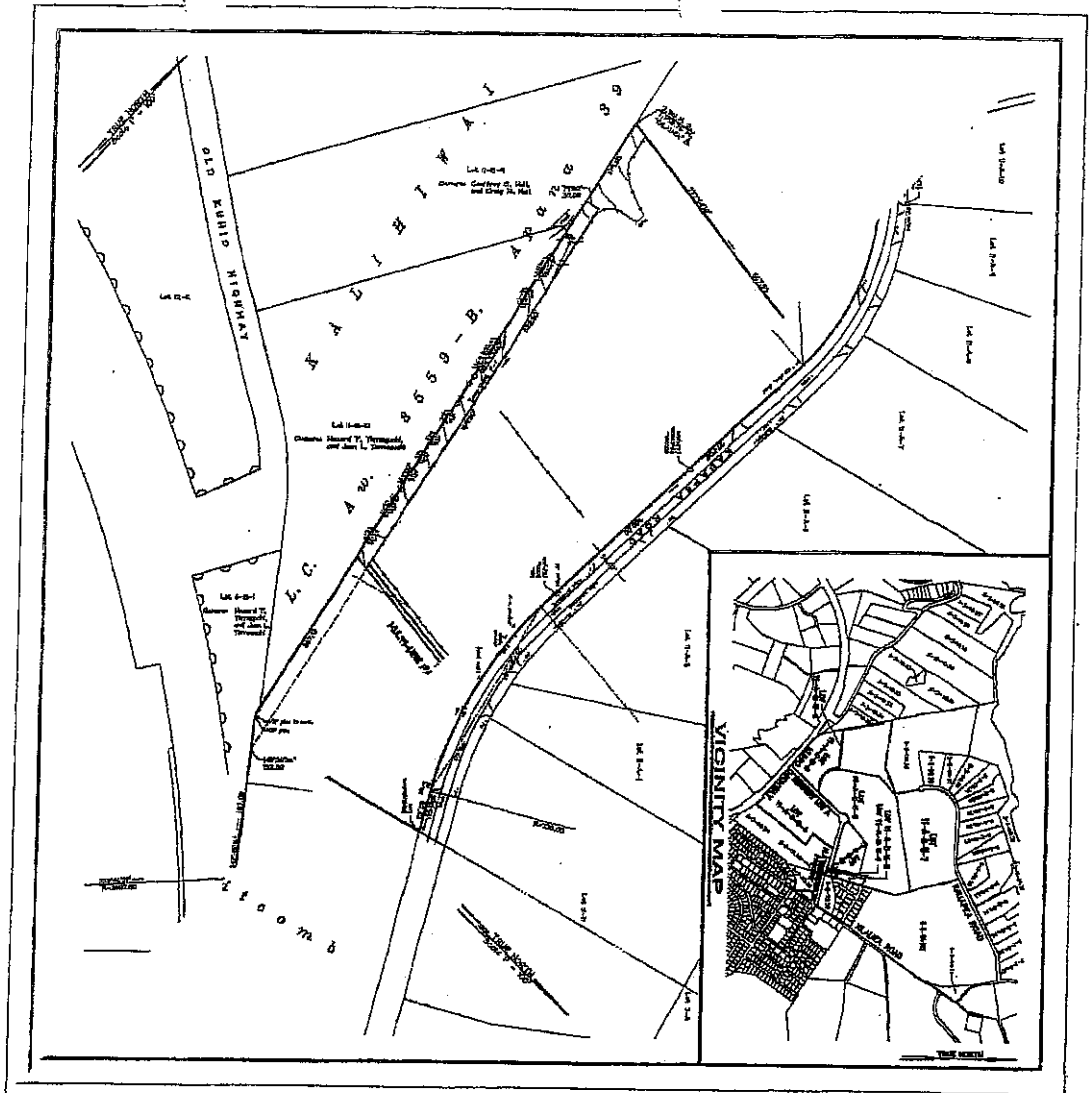


EXHIBIT "A"

EXHIBIT "B"

SUBDIVISION LOT INDEX

LOT	AREA (acres)
Roadway Lot A	4.821
Roadway Lot B	0.716
Lot 11-A-2-B-1	0.573
Lot 11-A-2-B-2	1.805
Lot 11-A-2-B-3	10.334
Lot 11-A-2-B-4	24.436
Lot 11-A-2-B-5	14.718
Lot 11-A-2-B-6	61.151
Lot 11-A-2-B-7 (Namahana Acres Units A-E)	60.166
Lot 11-A-2-B-8 (Multi Use Path)	.919

EXHIBIT "B"

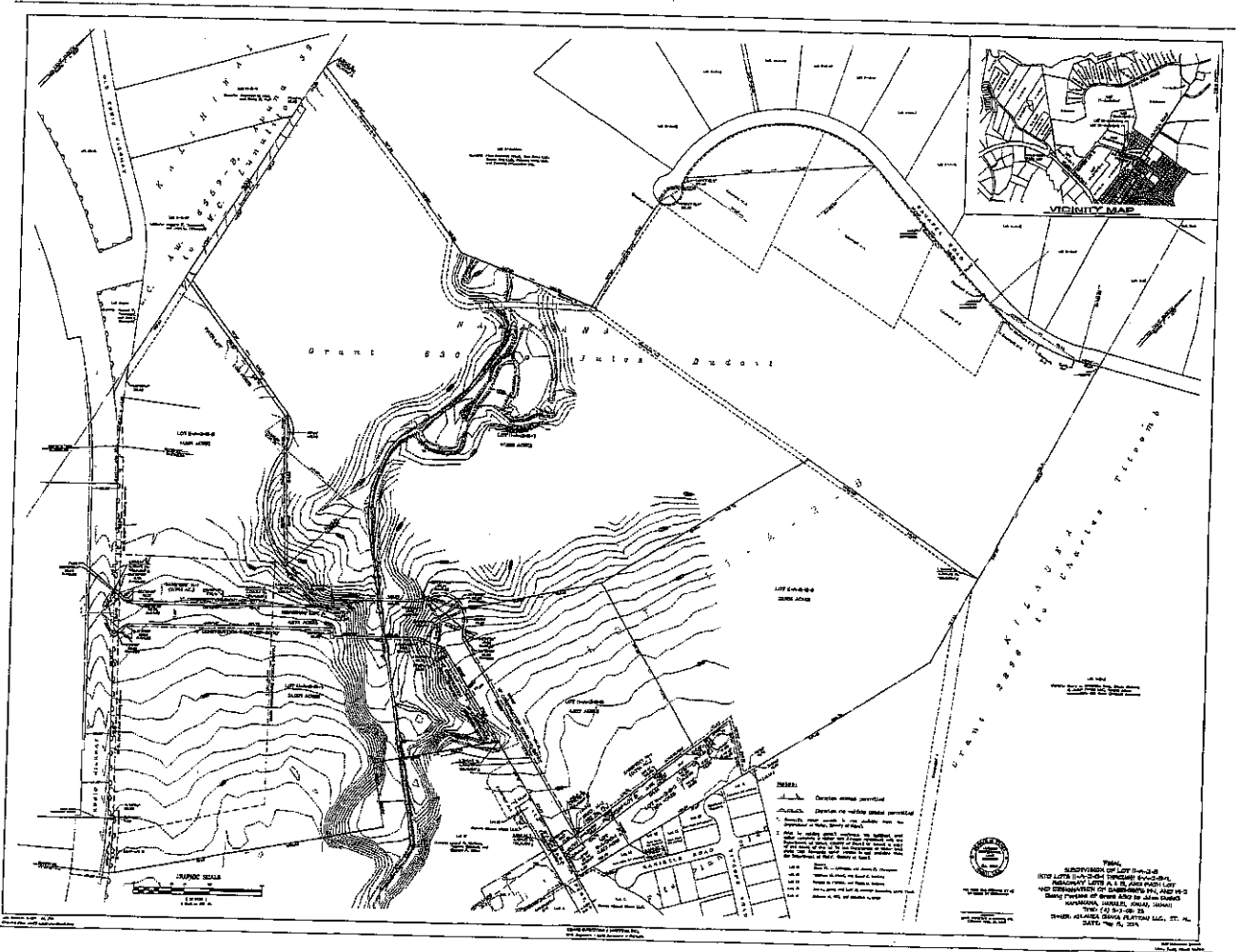


EXHIBIT "C"

SUBDIVISION LOT INDEX

LOT	AREA (acres)
Roadway Lot A	4.874
Roadway Lot B	0.715
Lot 11-A-2-B-1	0.573
Lot 11-A-2-B-2	1.804
Lot 11-A-2-B-3	11.327
Lot 11-A-2-B-4	29.209
Lot 11-A-2-B-5	14.889
Lot 11-A-2-B-6	22.956
Lot 11-A-2-B-7 (Namahana Acres Units A-E)	97.028
Path Lot (Multi Use Path)	1.061

EXHIBIT "D"

Donna Apisa
Chair

Glenda Nogami Streufert
Vice-Chair

Kanoe Ahuna
Kimo M. Keawe
Roy Ho
Sean Mahoney
Members



Michael A. Dahilig
Clerk of the Commission

PLANNING COMMISSION
County of Kaua'i, State of Hawai'i
4444 Rice Street
Kapule Building, Suite A-473
Lihu'e, Hawai'i 96766-1326
TEL (808) 241-4050 FAX (808) 241-6699

SEP 20 2018

RECEIVED
SEP 24 2018

Dennis Esaki
Esaki Surveying & Mapping
1610 Haleukana St,
Lihu'e, Hawai'i 96766

BELLES GRAHAM PROUDFOOT
WILSON & CHUN, LLP

Ian K. Jung, Esq.
Belles Graham Proudfoot Wilson & Chun, LLP.
Watumull Plaza
4334 Rice Street, Suite 202
Lihu'e, Hawai'i 96766

Subject: Subdivision of Lot 11-A-2-B into Lots 11-A-2-B-1 through 11-A-2-B-7,
Roadway Lots A & B, and multi-Use Path Lot and designation of Easements W-
1, Being portion of Grant 630 to Jules Dudoit at Namahana, Hanalei, Kaua'i,
Hawai'i. (S-2018-15, Kilauea Ohana Plateau LLC)

Subject subdivision was granted **TENTATIVE APPROVAL** by the Planning Commission at
their meeting held on September 11, 2018. Final approval will be granted subject to the
following conditions:

1. Requirements of the Planning Department:
 - a. An updated preliminary title report for each existing lot shall be submitted to the Planning Department for review
 - b. All existing and proposed easements, if any, shall be identified in the deed descriptions of the affected lots, draft copies of which shall be submitted to the Planning Department for review and approval.
 - c. Pursuant to Section 9-3.8(b) of the Subdivision Ordinance, Kaua'i County Code (1987), the Applicant shall submit to the Planning Department an electronic record

An Equ

(digitized format) of the final subdivision map(s) on disk for record keeping purposes prior to final subdivision approval.

- d. The Applicant shall pay a Park Dedication fee pursuant to Section 9-2.8 of the Kana'i County Code Subdivision Ordinance. An appraisal report and price list shall be provided to the Planning Department to forward to the Real Properties Division to help calculate the fee amount.
- e. An Environmental Impact Assessment Fee of One Thousand Five Hundred Dollars (\$1,500.00) shall be paid to the County of Kana'i.
- f. Newly created Lots 11-A-2-B-3 through 11-A-2-B-6 shall have no dwelling density. However, Lot 11-A-2-B-7 has a max dwelling density of five (5) units and this provision should be incorporated into the deed description of the subject parcels.
- g. As proposed, Lot 11-A-2-B-7 does not comply with the lot configuration requirement prescribed in Section 8-8.3(e) of the Comprehensive Zoning Ordinance (CZO). Prior to final subdivision map approval, the Applicant shall work with the Planning Department to comply with the foregoing standard.
- h. As proposed, Lots 11-A-2-B-1 and 11-A-2-B-2 does not comply with the minimum lot size requirement prescribed in Section 8-8.3(b) of the Comprehensive Zoning Ordinance (CZO). All lots within the proposed development shall comply with the foregoing standard prior to final subdivision map approval.
- i. Due to the topography in the area and relative to the roadway improvements for Roadway Lot A and Road way Lot B, there shall be cut and fill reserves established to facilitate actual construction of the roadway (if necessary). The locations and extent of these reserves shall be resolved with the Department of Public Works and shall be shown on the final map. There shall be no new structures permitted within the reserves; new structures should be setback from the reserves. The reserves along with the restrictions shall be identified in the deed descriptions, draft copies of which shall be submitted to the Planning Department for review and approval.
- j. The Applicant shall prepare and obtain construction plan approvals for necessary road, water, drainage, electrical and telephone utilities and facilities, and either construct the same or post a surety bond for completion.
- k. The applicant is made aware that the streets designated within the subdivision must be officially named before the Department approves the construction plans. Street names should be in Hawaiian and be submitted to our Department for review and approval, along with a request letter and 12 maps (on 8½" x 14" paper). The maps

should be detailed such that emergency vehicles, police services, postal deliveries, etc., are able to locate the street. References to roadway, such as the highway and other surrounding roads, should be shown on the street-naming map.

1. The applicant is advised that uses on the newly-created lots shall be limited to those listed as permissible uses within the "A" Agricultural District in the State Land Use Commission Rules and Regulations. Dwellings on the lot shall mean a single-family dwelling located on and used in connection with a farm where agriculture activity provides income to the family occupying the dwelling. These restrictions shall be included in the covenants for the proposed lots, draft copies of which shall be submitted to the Planning Department for review and approval.
 - m. As represented by the applicant, Roadway Lot A and the Shared Multi-Use Path Lot shall be dedicated to the County of Kaua'i. As such, proper documents shall be prepared by the applicant and be ready for execution prior to final subdivision map approval.
 - n. The applicant is advised that the subject subdivision application shall be exempt from the "one-time" agricultural subdivision restriction, per section 8-8.3(c) of the CZO, since it is a subdivision requested for public utility purposes.
2. Requirements of the Department of Water (DOW):
- a. Locate and show existing water meter/s (with appropriate meter number) on the subdivision map for DOW's review and approval. Also, identify the proposed subdivision lot the existing water meters will be assigned to. DOW comment may change depending on the approved tentative map.
 - b. For Lots 11-A-2-B-1 through 11-A-2-B-6, clearly letter on the final subdivision map and deeds:
 - i) "Domestic water service is not available from the Department of Water, County of Kauai."
 - ii) "Prior to building permit approvals, the applicant shall either complete a Waiver and Release Agreement with the Department of Water, County of Kaua'i or submit a copy of the deeds of the lot to the Department of Water that state that domestic water service is not available from the Department of Water, County of Kaua'i."

This deed restriction shall be recorded with the Bureau of Conveyances within ninety (90) days of the final subdivision approval by the Planning Department.

- c. The water system improvements required for Kilauea Lighthouse Village – Kilauea Road and Ala Namāhana Parkway Improvements must be completed and certification of Completion for the project must be issued by the DOW.

3. Requirements for Department of Public Works(DPW):

FORM & CONTENT OF MAP & SUPPLEMENTAL DOCUMENTS:

- a. The map does not comply with Section 3.031-J Form and Content of the Map of the Subdivision Ordinance No. 175. Paragraph J States “All maps shall show pertinent topographical information such as slopes and shapes of the land, approximate elevations, watercourses and drainage ways, and other information affecting the design of the subdivision.” Additionally, the map needs to show the existing pavement width and whether the abutting roadways are paved and where the pavement ends. We recommend that the preliminary map be returned for the required information.

DRAINAGE:

- b. The Subdivision and subsequent development of residences and other impermeable surfacing will increase storm water flows rates. A drainage study needs to be made to evaluate the impacts of the increased storm runoffs. Measures to keep flow to pre-development conditions are required. Provisions need to be established to prevent structures from being built in flood prone areas and to preserve the natural function and capacity of the watercourses.

ROAD:

- c. The widened area of ROADWAY LOT A near the stream crossing should be extended to the northeast (on both sides of the lot) until it meets the bulge for the future roundabout.
- d. The 10' construction right-of-entry should also be shown along ROADWAY LOT A on the southeast side of the widened area near the stream crossing.
- e. Change the name of the MULTI-USE PATH LOT to “SHARE USE PATH LOT” or simply “PATH LOT” or “PATH LOT C.” This lot must be widened to 20 feet and include a 100' radius where the lot bends around Lot 11-A-2-B-5, as shown in the earlier draft versions of this subdivision map. The PATH LOT must also include a 50' radius (minimum) at the location where this lot bends around Lot 11-A-2-B-7.

OTHERS:

- f. A grading permit will be required for this project. The property size is more than 10 acres. The maximum area that may be opened for grading or grubbing at any one time is ten (10 acres). The area of land that may be opened shall not exceed ten (10) acres. Grading/grubbing shall be accomplished in increments not more than 10 acres. Best Management Practices (BMP's) shall be provided at all times to the maximum extent practicable to prevent damage by sedimentation, erosion and dust to streams, water courses, natural areas and the properties of others.
- 4. Requirements for State Department of Health:
 - a. All structures and wastewater disposal systems are not shown on the subdivision map. The State of Hawaii Department of Health (DOH) Wastewater Branch will not recommend final approval of the subdivision application until we have information on existing wastewater system. The applicant must have his/her engineer or contractor submit a completed exiting cesspool information card for each cesspool, identifying the location of all wastewater systems both cesspools and septic systems with associated structures and their relationship to existing and proposed property lines. Please add existing septic system to the subdivision map.
 - b. The property may harbor rodents which will be dispersed to the surrounding areas when the site is cleared. In accordance with Chapter 11-26, entitled "Vector Control", Title 11, HAR, the applicant shall ascertain the presence or absence of rodents on the property. Should the presence of rodents be determined, the applicant shall eradicate the rodents prior to clearing the site.
 - c. Noise will be generated when construction occurs on after the subdivision. The applicable maximum permissible sound levels as stated in Title 11, Hawaii Administrative Rules (HAR), Chapter 11-46, "Community Noise Control", shall not be exceeded, unless a noise permit is obtained from the State Department of Health (DOH).
 - d. Temporary fugitive dust emissions during site preparation and construction could impact the nearby residents when the subdivided lots are developed. In accordance with Chapter 11-60.1, entitled "Air Pollution Control", Title 11, HAR, effective air pollution control measures shall be provided to minimize or prevent any fugitive dust emission from impacting the surrounding areas. This includes but are not limited to the use of water wagons, sprinkler systems, dust fences, etc.
 - e. In accordance with Title 11, HAR, Chapter 11-58.1, "Solid Waste Management Control", when the lot is further developed, the grubbed material and construction waste that is generated shall be either recycled or disposed of at a solid waste

disposal facility that complies with the DOH. The open burning of any of these wastes on or off site prohibited.

- f. The Department of Health (DOH), Clean Water Branch (CWB) has reviewed the subject document and offers these comments. Please note that our review is based solely on the information provided in the subject documents and its compliance with the Hawaii Administrative Rules (HAR), Chapters 11-54 and 11-55. You may be responsible for fulfilling additional requirements related to our program. We recommend that you also read our standard comments on our website at: <http://health.hawaii.gov/epo/files/2013/05/Clean-Water-Branch-Std-Comments.pdf>
- g. Any project and its potential impacts to State waters must meet the following criteria:
 - a. Antidegradation policy (HAR, Section 11-54-1.1), which requires that the existing uses and the level of water quality necessary to protect the existing uses of the receiving State water be maintained and protected.
 - b. Designated uses (HAR, Section 11-54-3), as determined by the classification of the receiving State waters.
 - c. Water quality criteria (HAR, Sections 11-54-4 through 11-54-8).
- h. You may be required to obtain National Pollutant Discharge Elimination System (NPDES) general permit coverage, for discharges of wastewater, including storm water runoff, into State surface waters (HAR, Chapter 11-55).

For NPDES general permit coverage, a Notice of Intent (NOI) form must be submitted at least 30 calendar days before the commencement of the discharge. An application for a NPDES individual permit must be submitted at least 180 calendar days before the commencement of the discharge. To request NPDES permit form" or CWB NOI Form") through the e-Permitting Portal and the hard copy certification statement with the respective filing fee (\$1,000 for an individual NPDES permit or \$500 for a Notice of General Permit Coverage). Please open the e-permitting portal website located at: <https://eha-cloud.doh.hawaii.gov/epermit/>. You will be asked to do a one-time registration to obtain your login and password. After you register, click on the Application Finder tool and locate the appropriate form. Follow the instructions to complete and submit the form.

- i. If your project involves work in, over, or under waters of the United States, it is highly recommended that you contact the Army Corp of Engineers, Regulatory Branch (Tel: 835-4303) regarding their permitting requirements.

Pursuant to Federal water Pollution Control Act [commonly known as the "Clean Water Act"] Paragraph 401(a)(1), a Section 401 Water Quality Certification (WQC) is required for "[any applicant for Federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities, which may result in any discharge into the navigable waters..." The term "discharge" is defined in CWA, Subsections 502(16), 502(12), and 502(6); Title 40 of the Code of Federal Regulations, Section 122.2; and Hawaii Administrative Rules (HAR), Chapter 11-54.

- j. Please note that all discharge related to the project construction or operation activities, whether or not NPDES permit coverage and/or Section 401 WQC are required, must comply with the State's Water Quality Standards. Noncompliance with water quality requirements contained in HAR, Chapter 11-54, and/or permitting requirements, specified in HAR, Chapter 11-55, may be subject to penalties of \$25,000 per day per violation.
- k. It is the State's position that all projects must reduce, reuse, and recycle to protect, restore, and sustain water quality and beneficial uses of State waters. Project planning should:
 - a. Treat storm water as a resource to be protected by integrating it into project planning and permitting. Storm water has long been recognized as a source or irrigation that will not deplete potable water resources. What is often overlooked is that storm water recharges ground water supplies and feeds streams and estuaries; to ensure that these water cycles are not disturbed, storm water cannot be regulated as a waste product of impervious surface. Any project planning must recognize storm water as an asset that sustains and protects natural ecosystems and traditional beneficial uses of the State waters, like community beautification, beach going, swimming, and fishing. The approaches necessary to do so, including low impact development methods or ecological bioengineering of drainage ways must be identified in planning stages to allow designers opportunity to include those approaches up front, prior to seeking zoning, construction, or building permits.
 - b. Clearly articulate the State's position on water quality and the beneficial uses of State waters. The plan should include statements regarding the implementation of methods to conserve natural resources (e.g. minimizing potable water for irrigation, gray water re-use options, energy conservation through smart design) and improve water quality.

- c. Consider storm water Best Management Practice (BMP) approaches that minimize the use of potable water for irrigation through storm water storage and reuse, percolate storm water to recharge ground water to revitalize natural hydrology, and treat storm water which is to be discharged.
- d. Consider the use of green building practices, such as pervious pavement and landscaping with native vegetation, to improve water quality by reducing excessive runoff and the need for excessive fertilization, respectively.
- e. Identify opportunities for retrofitting or bio-engineering existing storm water infrastructure to restore ecological function while maintaining, or even enhancing, hydraulic capacity. Particular consideration should be given to areas prone to flooding, or where the infrastructure is aged and will need to be rehabilitated.

If you have any questions, please visit our website at:

<http://health.hawaii.gov/cwb/>, or contact the Engineering Section, CWB, at (808)586-5309

- L. National Pollutant Discharge Elimination System (NPDES) permit coverage is required for pollutant discharge into State surface waters and for certain situations involving storm water (HAR, Chapter 11-55).
 - a. Discharge into Class 2 or Class A State waters can be covered under an NPDES general permit only if all of the NPDES general permit requirements are met. Please see the DOH-CWB website (<http://health.hawaii.gov/cwb/>) for the NPDES general permits and instructions to request coverage.
 - b. All other discharges into State surface waters (including discharges from Concentrated Animal Feeding Operations) and discharges into Class 1 or Class AA State waters require an NPDES individual permit. To request NPDES individual permit coverage, please see the DOH-CWB forms website located at: <http://health.hawaii.gov/cwb/site-map/clean-water-branch-home-page/forms/>
 - c. NPDES permit coverage for storm water associated with construction activities is required if your project will result in the disturbance of one (1) acre or more of total land area. The total land area includes a contiguous area where multiple separate and distinct construction activities may be taking place at different times on different schedules under a larger common plan of development or sale. NPDES permit coverage is required before the start of the construction activities.

Land disturbance includes, but is not limited to clearing, grading, grubbing, uprooting of vegetation, demolition (even if leaving foundation slab), staging, stockpiling, excavation into pavement areas which go down to the base course, and storage areas (including areas on the roadway to park equipment if these areas are blocked off from public usage, grassed areas, or bare ground).

- m. Please note that all discharges related to the project construction or operation activities, whether or not NPDES permit coverage and/or Section 401 WQC are required, must comply with the State's Water Quality Standards. Noncompliance with water quality requirements contained in HAR, Chapter 11-54, and/or permitting requirements, specified in HAR, Chapter 11-55, may be subject to penalties of \$25,000 per day per violation.
5. Requirements of the State Department of Transportation (DOT):
- a. Please provide land use/ development the roadway and intersection are intended to support. The intersection should be designed for the identified land use.
 - b. Kūhiō Highway is denoted "no vehicle access permitted" at the location of the proposed intersection. Access rights must be requested from HDOT.
 - c. The Applicant shall provide the State DOT the status of the LUC and County zoning process for the development?
 - d. The Applicant shall provide the State DOT whether an EIS and/or TIAR have been completed for the development?
6. The Applicant is advised the should any archaeological or historical resources be discovered during ground disturbing/construction work, all work in the area of the archaeological/historical findings shall immediately cease and the applicant shall contact the State Department of Land and Natural Resources, Historic Preservation Division and the Planning Department to determine mitigation measures.
7. The Applicant is advised that prior to and/or during construction and use additional conditions may be imposed by government agencies. Should this occur, the Applicant shall resolve these conditions with the respective agency(ies).

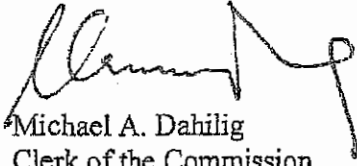
You are hereby informed that the final subdivision map must be filed within one (1) year after the tentative approval date in order to obtain final approval. If not filed, the preliminary

Dennis M. Esaki, PE/Esaki Surveying & Mapping
Ian K. Jung, Esq./Belles Graham Proudfoot Wilson & Chun, LLP.
Kilauea Plateau Subdivision, S-2018-15
Page 10 of 11

subdivision map and construction plan, if any, shall become null and void unless an extension of time, not to exceed six (6) months, is granted by the Planning Commission.

Dennis M. Esaki, PE/Esaki Surveying & Mapping
Ian K. Jung, Esq./Belles Graham Proudfoot Wilson & Chun, LLP.
Kilauea Plateau Subdivision, S-2018-15
Page 11 of 11

Sincerely Yours,

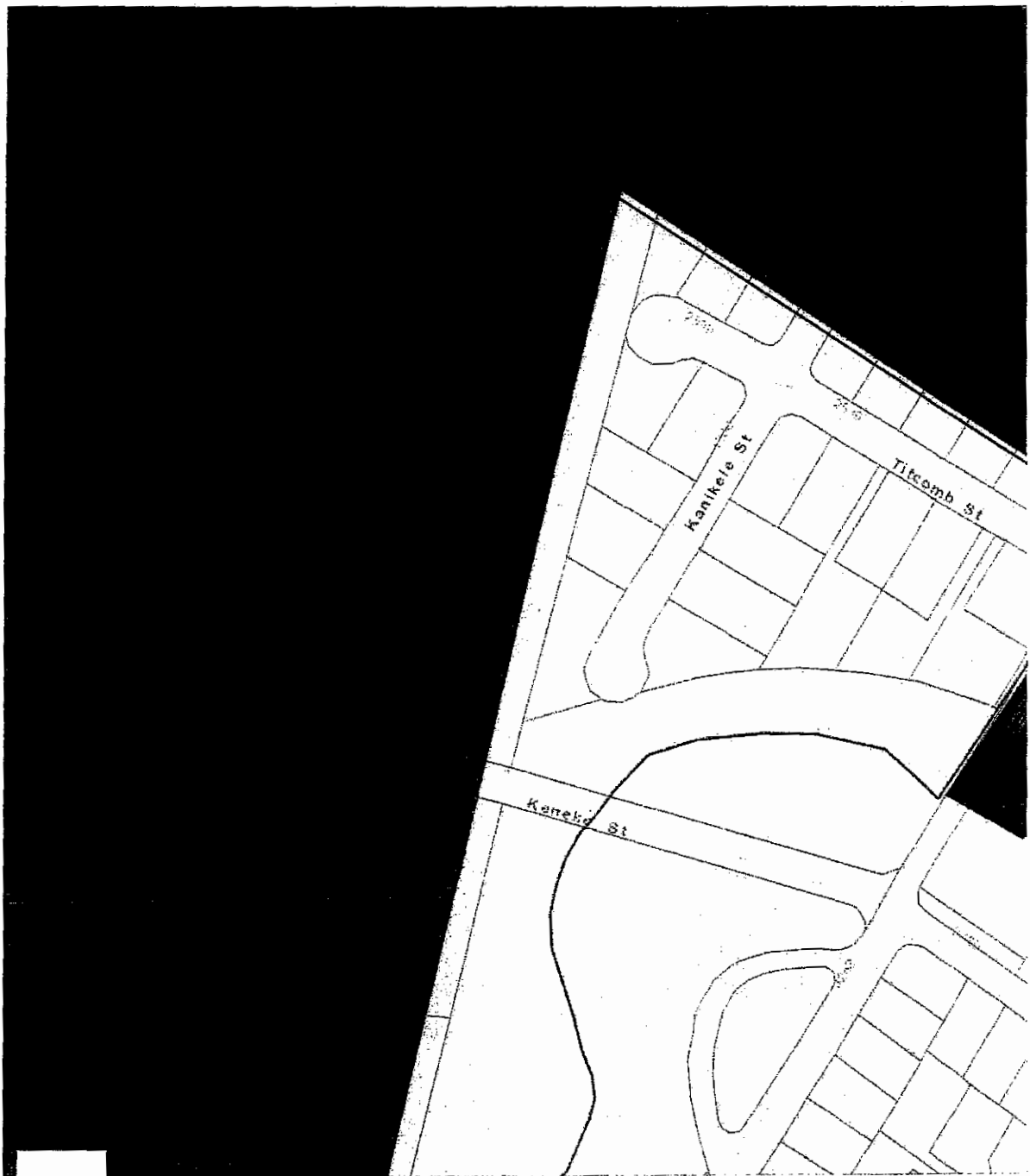


Michael A. Dahilig
Clerk of the Commission

xc: COK Public Works Dept.
COK Water Dept.
State Dept. Health
State Dept. Highways

EXHIBIT "D"

EXHIBIT "E"



State of Hawaii Land Use District Boundaries Map - January 2...

EXHIBIT "F"

